Remarks:

Claims 50-72 remain for consideration in this application, with claims 50, 59, 63 and 72 being independent. In the Office Action, claims 1-7 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1-3, 5-10, 12-17, 19-28, 31-39, and 41-49 were also rejected under 35 U.S.C. § 102(e) as being anticipated by Kaufer et al., U.S. Patent No. 6,519,763. Finally, claims 4, 11, 18, 29, 30 and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaufer.

Claims 1-49 have been canceled and new claims 50-71 have been added. The new claim language is supported in the specification at paragraphs 97, 109, 111, 115 and 174, among others. Applicant wishes to bring to the Examiner's attention co-pending application number 09/746,024 (the '024 application), filed on December 23, 2000, and published as U.S. Patent Application Publication Number U.S. 2002/0143594. Amended claims of the '024 application that were rejected present some similarities to the new claims in the present application. The amended claims of the '024 application were rejected based on U.S. Patent Application Publication No. U.S. 2001/0028364; Jeff Angus, *Online project-management teamware*, INFORMATIONWEEK Apr. 24, 2000 at 96; *The Tech Museum Achieves Project Collaboration Breakthrough with Enact Enterprise System*, PR NEWSWIRE, Apr. 3, 2000; and *Netmosphere® Announces Enact Enterprise System™ 4.0, Industry's First Enterprise Scale Real-Time Project Collaboration Solution*. PR NEWSWIRE, Apr. 3, 2000.

The new claims in the present application are directed to statutory subject matter. Each of the new claims, for example, is drawn to a "computer-readable medium," which renders it compatible with the requirements of 35 U.S.C. § 101. MPEP 2106.IV.B.1.(a)

(stating that a "claimed computer-readable medium encoded with a computer program is a computer element . . . and is thus statutory").

Turning now to the rejections based on 35 U.S.C. §§ 102 and 103, Applicant respectfully asserts that Kaufer is not analogous art. In order to rely on a reference as a basis for rejection, the reference must be "analogous," or "reasonably pertinent to the particular problem." A reference is reasonably pertinent if, "even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." In re Oetiker, 977 F.2d 1443, 1446 (Fed. Cir. 1992).

The present invention relates to generating and updating a critical path schedule for projects in the *construction* industry, while the invention disclosed in Kaufer relates to predictive analyses in the *software* industry. It will be appreciated that projects in the construction industry are of a substantially different nature than projects in the software industry, as explained below.

First, construction projects must follow a schedule that is more sequentially rigid than software project schedules. In a construction project, for example, site selection and purchase must be completed before excavation can begin; excavation must be completed before a foundation can be poured; the foundation must be completed before a structure frame can be erected; the structure frame must be completed before the electrical and plumbing work can be done; etcetera. In contrast, various units of a software project can be, and usually are, developed and tested simultaneously with the final build (integration of units) occurring after the various software units have been developed. Therefore, software project schedule prediction requires a substantially different approach than

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construction project critical path management.

Another difference between construction project management and software project management is the level of predictability inherent in each. Construction projects, for example, typically involve work that is relatively routine and therefore predictable, such as installing electrical wires, insulation and siding. It will be appreciated that unforeseen challenges in the construction work itself typically present only minimal delays. Software development, in contrast, is much less predictable in that it involves applying mathematical and scientific principles to solve new problems, often requiring the use of specialized development and testing tools.

Yet another difference between construction project management and software project management is the diversity of project participants. Construction projects frequently include various independent contractors and subcontractors who do not maintain communications, while software development projects typically involve participants from just one or two companies who hold frequent meetings and communicate via a computer network. Furthermore, construction projects require many of the participants to work at the construction site, where they may receive communications via hand held devices, such as cell phones, if at all.

For these and other reasons, software development predictive tools do not logically commend themselves to the attention of one of ordinary skill in the art seeking to automate the critical path scheduling and document management aspects of a construction project. Therefore, Kaufer and similar references are not analogous to the present invention and are not properly cited as prior art.

Turning now to the newly added claims of the present invention, the new claims

include elements not disclosed in any of the above-mentioned prior art references. For example, each of new independent claims 50, 59, 63 and 72 include limitations that restrict them specifically to the construction industry. None of the references include such limitations. Furthermore, independent claims 50, 63 and 72 each include a computer-readable medium for directing a computer to identify critical construction project tasks, generate a critical path schedule, and present the critical path schedule to a project participant. Kaufer does not disclose software for identifying critical path tasks, but merely discloses "dependency tables"—not created by the software—that store information about relationships between tasks. Col. 13, lines 22–47. Furthermore, Kaufer does not disclose creating a critical path schedule and presenting the schedule to a project participant.
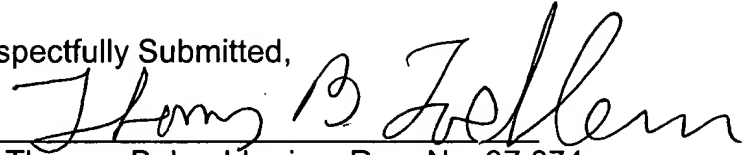
Similarly, the prior art cited in the '024 application office action does not disclose said elements. It should be noted that the Fredell publication relies on priority from provisional application number 60/182,796 to predate the filing date of the present application, therefore the disclosure of the provisional application is the operative reference. Neither the provisional application nor the articles disclose a computer for implementing a critical path scheduling system for construction projects, wherein the computer identifies critical project tasks and creates a critical path schedule.

In view of the foregoing, a Notice of Allowance appears to be in order and such is courteously solicited.

Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 19-0522.

Respectfully Submitted,

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